IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA, 1928

Crl.MC.No. 3267 of 2006()

ST.1286/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAKADA

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PETITIONER: ACCUSED:

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1. B. JAYAN BABU, KYLASAM,
   THEKKINMOODU, TRIVANDRUM.

2. B. BABU, KYLASAM, THEKKINMOODU,
   TRIVANDRUM.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. SAJI DANIEL, MULAMOOTTIL HOUSE,
   AYUR, EDAMULAKAL VILLAGE, TRIVANDRUM.

BY P.P. SRI.K.A. AKBAR.
BY ADV. SRI.LATHEESH SEBASTIAN
SRI.N.K.KARNIS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.3267 OF 2006

Dated this the 3rd day of January, 2007

ORDER

Against the petitioners a private complaint was filed by the respondent/complainant. The crux of the allegations is that the petitioners made false representations before the complainant and induced him to accept a post dated cheque. They had no serious intention to honour the cheque. They had with fraudulent intention induced the complainant to receive the cheque. Before the date fixed for presentation of the cheque, the account was closed by the petitioners with fraudulent and objectionable motives. On 20/3/2005 when the cheque was presented, it was returned dishonoured on the ground that the account is closed. The private complaint filed by the complainant was referred by the learned Magistrate to the police. The police have registered a crime. Investigation is in progress. The petitioners have now come before this Court with the prayer that the powers under Sec.482 of the Cr.P.C. may be invoked and the F.I.R. registered and the investigation which has commenced may be quashed.

2. The learned counsel for the petitioners submits that there was no fraudulent intention at all when the cheque was handed over. After handing over of the cheque, the petitioners were compelled to close the account on account of reasons beyond their control. In these circumstances, there is no element of culpability and no ingredient of the offence of cheating is revealed, it is contended. The petitioners may be saved of the trauma of vexatious criminal proceedings against them, it is prayed.

3. The respondent/the de facto complainant opposes the application. The learned counsel submits that the sequence of events would clearly suggest that the petitioners, who closed the account without even intimating the complainant after the date of the cheque, were acting with fraudulent and culpable intention.

4. It is too early for this Court to hazard an authentic opinion on the question whether the closing of the account was done with any fraudulent, contumacious or culpable intention. Certainly, all the relevant facts will have to be collected by the

Investigator in the course of investigation. If at the time when the cheque was handed over, there was no fraudulent intention and the petitioners were obliged on account of reasons beyond their control to close the account, no criminal offence can be alleged against the petitioners. But whether culpable intention was there or not at the time when the post dated cheque was handed over is certainly a matter which will have to be investigated and facts collected. I find absolutely no reason, at this stage, to prematurely terminate the investigation against the petitioners.

5. I find no merit in the contention that the failure or miscarriage of justice would result. The petitioners can certainly appear before the learned Magistrate and seek bail. In the alternative, they can approach the superior courts for grant of anticipatory bail, if sufficient circumstances exists. The mere possibility of arrest and continuation of the investigation cannot, in the facts and circumstances of this case, be reckoned as amounting to failure or miscarriage of justice to justify the invocation of the powers under Sec.482 of the Cr.P.C.

6. This Crl.M.C. is, in these circumstances, dismissed with the above observations.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge